

Serial No. 10/761,830  
Atty. Doc. No. 10448-002

#### REMARKS

Claims 1 - 7 are pending in this application. Independent claims 1 and 7 have been amended to remove reference of the transitioning outside diameter to allow the neck portion to fit a variety of openings, to comply with 35 USC 112, 1<sup>st</sup> paragraph, as helpfully suggested by the Examiner. Additionally, the preambles of claims 1-7 have been amended to recite a ventilation pipe protector adaptable to a ventilation pipe, to comply with 35 USC 112, 2<sup>nd</sup> paragraph, as helpfully suggested by the Examiner.

To advance prosecution, independent claim 1 has been amended to recite that a portion of the neck portion extends into the top opening of the ventilation pipe, and that the neck portion contacts the top opening and a portion thereof extends into the top opening to achieve a low tolerance fit to the ventilation pipe. Amended independent claim 7 includes similar amendments to amended independent claim 1. Support for the amendments to independent claims 1 and 7 may be found in FIGS. 16-17 of the originally filed specification, for example, illustrating the portion of the neck portion 24 extending into the top opening of the ventilation pipe 2, and ¶45 of the specification, for example. As the Examiner is aware, MPEP 608 permits the Applicant to rely solely on the drawings in providing a descriptive basis for the amendments to independent claims 1 and 7. Applicant respectfully requests allowance of the present application in view of the foregoing amendments and the following remarks.

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Rejection of Claims 1-7 under 35 USC 102

The Examiner rejected independent claims 1 and 7 based upon the Hernandez publication. The Hernandez publication discloses a vent ingress prevention device 10' placed in a vent pipe 50 atop a roof 51. The Examiner reproduced FIG. 6 of Hernandez with minor modifications in the Office Action, and contended that Hernandez discloses a neck portion (58) coupling the hollow head (60) to the tubular sleeve (14'), including a transitioning outside diameter (12') from adjacent the hollow head (60) to the tubular sleeve (14'), where the neck portion (58) contacts a top opening (g) of the ventilation pipe. Amended independent claims 1 and 7 recite at least a portion of the neck portion extending into the top opening of the ventilation pipe. The Hernandez publication expressly teaches away from such. Hernandez describes a tubular base member 12 and a pipe-engaging section 14 within a vent pipe 50, the tubular base member 12 and pipe-engaging section 14 separated by a circumferential bead 16 to prevent the tubular base member 12 from slipping into the vent pipe 50 (¶ 19, FIG. 3). The placement of the circumferential bead 16 is best described in ¶ 25:

The pipe engaging end 14 of the tubular base member 12 is inserted within a vent pipe 50 placing the circumferential bead 16 directly atop the vent pipe 50 as best shown in FIG. 3. (¶ 25) (emphasis added)

Additionally, Hernandez emphasizes that the circumferential shoulder 16' of FIG. 6 "serves substantially the same purpose as the circumferential bead 16 as described in connection with the embodiment of FIGS. 1-3" (¶ 26). As with the circumferential bead 16, the circumferential shoulder 16' is positioned atop the vent pipe 50, to prevent the upper section 58 and tubular base 12' from slipping into the vent pipe 50 (¶ 26, FIG. 6). Since the upper section 58 and the tubular base 12' are positioned above the circumferential shoulder 16', and the pipe-engaging section 14' is positioned below the circumferential shoulder 16' (¶ 26, FIG. 6), the upper section 58 and tubular base 12' do not extend into the vent pipe 50, as recited in independent claims 1 and 7. In fact, the circumferential shoulder 16' itself serves to ensure that the upper section 58 and tubular base 12' (which the Examiner contends are the neck portion 58 and transitioning outside diameter 12') do not extend into the vent pipe 50, thereby teaching away the invention as claimed in amended independent claims 1 and 7.

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Additionally, Hernandez fails to disclose a neck portion contacting a top opening of the ventilation pipe, as recited in independent claims 1 and 7, as the circumferential bead 16 (and circumferential shoulder 16') which rest atop the vent pipe 50, is not a neck portion as recited in independent claims 1 and 7, as it does not couple the hollow head to the tubular sleeve, nor have a transitioning outside diameter from the head outside diameter adjacent the hollow head to the sleeve outside diameter adjacent the tubular sleeve. Accordingly, Hernandez fails to disclose a ventilation pipe protector adaptable to a ventilation pipe, as recited in independent claims 1 and 7.

Indeed, Hernandez fails to disclose a neck portion contacting the top opening and a portion of a neck portion extending into the top opening, to achieve a low tolerance fit to the ventilation pipe, as recited in amended independent claims 1 and 7. Instead, Hernandez discloses a pipe engaging section 14 (and 14') sized to "securely fit within the vent pipe 50" (§19). Accordingly, Hernandez discloses a pipe engaging section 14' which is "generally cylindrical in shape" (§26), to securely fit within the vent pipe 50 and achieve a tight fit, and fails to disclose a neck portion contacting the top opening and a portion of a neck portion extending into the top opening, to achieve a low tolerance fit to the ventilation pipe, as recited in amended independent claims 1 and 7.

Thus, independent claims 1 and 7 are patentable over the prior art. In view of the patentability of the independent claims, it is also submitted that all of their dependent claims, that recite yet further distinguishing features, are also patentable. These dependent claims require no further discussion herein.

#### Rejection of Claims 3, 5 and 6 under 35 USC 103

The Examiner rejected claims 3, 5 and 6 based upon the Hernandez publication in view of several secondary references. The Hernandez publication is discussed above, along with its critical deficiencies in regard to amended independent claims 1 and 7. None of the cited secondary prior art references (McDonald, Levy, Brenner) account for these noted critical deficiencies of Hernandez in regard to amended independent claims 1 and 7.

Thus, independent claims 1 and 7 are patentable over the prior art. In view of the patentability of the independent claims, it is also submitted that all of their dependent claims,

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including claims 3, 5 and 6, that recite yet further distinguishing features, are also patentable.

These dependent claims require no further discussion herein.

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Conclusion

In view of the remarks provided herein, it is submitted that all of the claims are patentable over the prior art. Accordingly, a Notice of Allowance is respectfully requested in due course. Should any further informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

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By: 

Cian G. O'Brien  
Registration No. 55,792  
(407) 926-7709

Beusse Wolter Sanks Mora & Maire  
390 N. Orange Ave, Suite 2500  
Orlando, FL 32801